

Moving Europe towards a sustainable and
safe railway system without frontiers.

OPINION

ERA/OPI/2023-09

OF THE EUROPEAN UNION AGENCY FOR RAILWAYS

for

The Netherlands

regarding

One (1) adopted rule setting requirements on the operational use
of the signalling system

Disclaimer:

The present document is a non-legally binding opinion of the European Union Agency for Railways. It does not represent the view of other EU institutions and bodies, and is without prejudice to the decision-making processes foreseen by the applicable EU legislation. Furthermore, a binding interpretation of EU law is the sole competence of the Court of Justice of the European Union.

1. General Context

In line with Article 8 of Directive (EU) 2016/798 (Railway Safety Directive) and Article 26 of Regulation (EU) 2016/796 (the Agency Regulation), this opinion covers the examination by the European Union Agency for Railways (hereinafter the Agency or ERA) of one (1) Dutch adopted national rule establishing requirements on the operational use of the signalling system.

The Netherlands notified this rule in the Single Rules Database (SRD)¹ on 07 July 2023. The Agency assessed it and reached the conclusion (also recorded in the SRD) that the notified adopted rule contains requirements which according to the Agency's opinion is not within the scope of notifications of national rules in the field of safety, according to Article 8 of Directive (EU) 2016/798 on railway safety.

The Agency shared with the Netherlands its negative assessment on 25 September 2023.

As there were questions regarding the Agency's assessment, the Netherlands asked for a bilateral discussion with the Agency that took place on 10 November 2023. During this discussion the Agency provided further clarifications on the rule that was rejected. Following this meeting, the Netherlands notified the Agency via SRD its rejection of the Agency's negative assessment of this adopted national rule on 23 November 2023.

This opinion is addressed to the Netherlands with a copy to the European Commission (EC) and is uploaded on the SRD and on the Agency's website.

2. Legal Background

Article 26 (3) of the Regulation (EU) 2016/796 sets out the following:

Where the examination referred to in paragraph 1 leads to a negative assessment, the Agency shall inform the Member State concerned and ask it to state its position regarding that assessment. If, following that exchange of views with the Member State concerned, the Agency maintains its negative assessment, the Agency shall within a maximum period of 1 month:

(a) issue an opinion addressed to the Member State concerned, stating that the national rule or rules in question has or have been the subject of a negative assessment and the reasons why the rule or rules in question should be modified or repealed; and

(b) inform the Commission of its negative assessment, stating the reasons why the national rule or rules in question should be modified or repealed.

This opinion is issued pursuant to Article 26 (3) of the Regulation (EU) 2016/796.

This opinion points out the fact that the adopted national rule of the Netherlands does not meet the scope of the assessment according to the analysis and the Annex to this opinion.

¹ Rule ID NL-SA-847-1-A (reference in SRD).

The applicable EU legislation which is relevant for this opinion is:

- *Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety,*
- *Commission Implementing Regulation (EU) 2023/1693 of 10 August 2023 amending Implementing Regulation (EU) 2019/773 on the technical specification for interoperability relating to the operation and traffic management subsystem of the rail system within the European Union,*
- *Commission delegated Regulation (EU) 2018/762 of 8 March 2018 establishing common safety methods on safety management system requirements pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulations (EU) No 1158/2010 and (EU) No 1169/2010.*

3. Analysis

Rule ID	Rule content and reference in English	Assessment Result	Member State's (MS) position on ERA's negative assessment	MS's justification	ERA's final opinion in English
NL-SA-847-1-A	<p>The Member State refers to one adopted legal document for the notification of the rule as a Type 3 rule 'Common operating rules of the railway network that are not yet covered by TSI's, including rules relating to the signalling and traffic management system. The rule scope is notified as 'area for NRs – Signalling rules: Rules related to the operational use of the national signalling system'. The following legal document is notified: 'Regeling spoorverkeer geldend van 01-07-2023'; reference chapter 3. Signals §4. Follow-up of signals Article 31 (7): The permitted speed under the sixth paragraph shall apply until the time when the signal referred to in point 6.10 of the document referred to in Appendix A of the TSI Operation and Traffic Management has been displayed or a corresponding message has been received and one or more of the signals</p>	<p>The Member state refers to one adopted legal document for the notification of the rule as a Type 3 rule 'Common operating rules of the railway network that are not yet covered by TSI's, including rules relating to the signalling and traffic management system. The rule scope is notified as 'area for NRs – Signalling rules Rules related to the operational use of the national signalling system'. The following legal document is notified: 'Regeling spoorverkeer'. The following references are notified: 'Chapter 3 Signals, §4 Follow up of signals, Article 31': 'The permitted speed under the sixth paragraph shall apply until the time when the signal referred to in point 6.10 of the document referred to in Appendix A of the TSI Operation and Traffic Management has been displayed or a corresponding message has been received and one or more of the signals referred to in the sixth paragraph are passed.' There is no signal mentioned in 6.10 of appendix A TSI OPE and no message corresponding to it. Section 6.10 was used for level 3, in the latest OPE TSI (Reg. 2023/1693) it has been replaced by an 'enriched' level 2 and this app A section has consequently been deleted. The MS replied following: 'Thank you for sharing your interpretation of our rule. Your interpretation is indeed correct: this rule is about the driver having to follow the lineside signals when entering Level NTC. However, to be more precise, this is only about the 'Acknowledgement' (6.11.2). If we</p>	<p>MS rejected ERA's negative assessment</p>	<p>Rule 847 is about the applicability of class B lineside signalling when leaving ERTMS infrastructure. As long as our network still includes the national class B system, when driving on ERTMS infrastructure - either on an ERTMS only line or a dual signalling line - at some point there will be a transition to class B infrastructure. When an ERTMS train approaches this transition, the driver should observe the class B lineside signal that is located just on approach of the actual transition point as the ERTMS cab signalling will shortly disappear. To trigger this, the expected transition should be announced by the ERTMS cab signalling at some point, as the main focus of the driver will be on the ERTMS DMI. Also, a national rule is required to arrange that the lineside signal just prior to the transition has to be observed.</p> <p>Rule 847 has been included for this purpose, which refers to TSI OPE Appendix A 6.11.2. The Netherlands needs a reference to 6.11.2 for this, because this signal (request for confirmation of the transition) is announced at the right moment. Signal 6.11.1 comes too early, as the announcement is typically provided several blocks on approach of transition (approximately 3-4 km before transition). On dual signalling infrastructure, until the transition point will be reached, several class B signals will then be passed that should not take precedence over the ERTMS cab signalling yet. Signal 6.11.3 comes too late, as the train will only run in LTNC when the first class B signal that needs to be observed has already been passed. Signal 6.11.2 is shown exactly at the right moment and therefore we need a reference to this signal. For more background</p>	<p>The Agency understands that the rule referenced in Article 31 (7) of the 'Regeling spoorverkeer' points out to the reference 6.10 of the document referred to in Appendix A of the TSI Operation and Traffic Management (TSI OPE). During the bilateral exchanges it was clarified that the intention of the Netherlands is to refer to the reference 6.11.2 of Appendix A of the TSI OPE. This reference is not suitable because currently 6.11.2 leaves no room for non-harmonised rules to apply while the prompt for acknowledging the transition to Level NTC is shown on the DMI. The Agency acknowledges the operational need of NL to instruct the driver to observe the class B signal exactly when the prompt for acknowledging the transition is displayed, based on the specifications and trackside engineering of the Dutch signalling and ETCS system. Consequently, ERA understands that the only possibility remains to add to the Dutch national rule the reference of 6.11.2 of Appendix A of the TSI OPE.</p> <p>Nevertheless, as such, the rule can still not be accepted as it conflicts with the current provisions of 6.11.2 of OPE TSI Appendix A. Should the Netherlands wish to keep this national rule, it shall introduce a change request to have the afore-mentioned section 6.11.2 amended to allow non-harmonised rules to apply in this situation too, providing as evidence the</p>

Rule ID	Rule content and reference in English	Assessment Result	Member State's (MS) position on ERA's negative assessment	MS's justification	ERA's final opinion in English
	referred to in the sixth paragraph are passed.	would specify our rule to refer to 6.11.2 (instead of 6.11), would you also give a positive assessment?' Reply ERA: If you specify rule NL-SA-847-1-A to refer to 6.11.2, it will still not be positively assessed for the following reason: The acknowledgement icon appearing in rule 6.11.2 is displayed before the train actually leaves the ETCS and enters the NTC area. The actual transition to NTC will only occur at a specific location along the track, defined by the trackside engineering, provided the driver has in the meantime acknowledged this transition by acting on the yellow button (the transition does not occur when the driver acknowledges). The rule cannot be accepted.		information and a visual representation of the situation in The Netherlands, see the powerpoint presentation. The powerpoint presentation is uploaded in the SRD as an attachment and contains the operating principles based on the design of ERTMS in the Netherlands.	argumentation put forward in the context of this notification.

4. The opinion

The Agency considers that the provisions in the adopted national safety rule of the Netherlands do not meet the scope of notification of a national rule in the field of safety, according to Article 8 of Directive (EU) 2016/798 on railway safety.

For this reason, in accordance with Article 26 (3) of Regulation (EU) 2016/796, the Agency with this opinion confirms its negative assessment. This opinion is addressed to the Netherlands, with a copy to the European Commission (DG Move).

Valenciennes, 15/12/2023

SIGNED

Josef DOPPELBAUER
Executive Director

Annex: Impact Assessment Note

One (1) adopted rule setting requirements on the operational use of the signalling system ref. NL-SA-847-1-A

Issued as per Art. 8(1) of Regulation (EU) 2016/796 and the Impact Assessment procedure adopted by the ERA Management Board (Decision n.290, 16/03/2022)

1. Context and assessment of impacts																															
1.1. The national rule in object																															
The Netherlands notified in SRD (ref. NL-SA-847-1-A) a national rule concerning operations of trains and instruction to drivers to follow lateral signals during transition from sections equipped with ETCS to sections equipped with class-b system.																															
1.2. Analysis performed																															
The Netherlands claims the NR in subject as fitting within the provision for national rules of TSI OPE (Commission Implementing Regulation (EU) 2023/1693). In its assessment, the Agency understood the operational need of the Netherlands however concluded its assessment of the NR in subject negatively. Instead, the Agency advised the Dutch authorities to post a Change Request in order to address their need accordingly.																															
1.3. Assessment of impacts																															
The ERTMS operational principles and rules are published on the ERA website since 2019 and were integrated into the TSI OPE during the latest revision. All stakeholders have been developing systems and operational practices according to these principles and the acceptance of this NR by the Netherlands would undermine interoperability, clarity of applicable legal frameworks at EU and national level as well as legal integrity of TSI OPE.																															
1.4 Quantitative assessment of impacts (optional)																															
N/A																															
1.5. Stakeholders affected																															
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2. Preferred option**2.1. Recommendation**

No alternative options are to be assessed and it is confirmed a negative assessment of the rule by the Netherlands.